

AMENDED IN ASSEMBLY AUGUST 18, 2008

AMENDED IN ASSEMBLY JULY 1, 2008

AMENDED IN SENATE APRIL 15, 2008

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1352

Introduced by Senator Wyland

February 20, 2008

An act to amend Section 1742.1 of, *and to amend and repeal Section 1742 of*, the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 1352, as amended, Wyland. Public works: prevailing wage rates: wage and penalty assessments.

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if the Labor Commissioner determines, after investigation, that the contractor or subcontractor, or both, violated the laws regulating public works contracts, including the payment of prevailing wages. Existing law permits the affected contractor or subcontractor to obtain review of a civil wage and penalty assessment or a notice of withholding, as defined, by transmitting a written request for a hearing to the office of the Labor Commissioner within 60 days after service of the assessment or notice and requires a hearing officer, as specified, or, after January 1, 2009, an administrative law judge appointed by the Director of Industrial Relations, to commence a hearing within 90 days of receipt of the request. *If a request for a hearing has been filed, existing law allows the affected contractor, subcontractor, or surety to deposit cash or other specified items into an escrow account, and upon the receipt of an*

administrative decision or notice, as specified, the escrowed amount is distributed to the prevailing party, as specified. If an escrow account is not established, and the affected party is liable for liquidated damages, an amount equal to unpaid wages, is to be distributed, as specified. Existing law provides that, after 60 days following the service of the assessment or notice, the affected contractor, subcontractor, and surety on a bond issued to secure the payment of wages, as provided, become liable for liquidated damages in an amount equal to the amount of unpaid wages, as specified. Existing law authorizes the hearing officer, as specified, or, after January 1, 2009, an administrative judge, to waive payment of the liquidated damages if the affected contractor or subcontractor demonstrates, as provided, that he or she had substantial grounds for believing the assessment or notice to be in error, and also permits the affected contractor or subcontractor to obtain review of the administrative decision by filing a petition for a writ of mandate to the superior court within 45 days after service of the decision.

~~This bill would modify those provisions to provide that an affected contractor, subcontractor, and surety become liable for liquidated damages after 60 days following the service of the assessment or notice of withholding, as specified, only if no request for a hearing has been made. This bill would, if a request for a hearing has been filed, allow the affected contractor, subcontractor, or surety to deposit in an escrow account, within 5 working days, specified items in the amount of wages covered by the assessment, and provide a procedure for distributing the amount of money due and owing and any liability in connection thereto, as provided.~~

This bill would continue to require a hearing officer, as specified, to hold the hearings, as provided, and would not require that an administrative law judge hold these hearings after January 1, 2009.

This bill would not provide for the contractor, subcontractor, or surety to establish an escrow account, but would allow the affected party to deposit the full amount of the assessment for the Department of Industrial Relations to hold in escrow pending review, as specified, and to be distributed, as specified. If so deposited, there would be no liability for liquidated damages. This bill would require the Director of Industrial Relations to waive payment of liquidated damages, or a portion thereof, if the contractor or subcontractor demonstrates that there were substantial grounds for its appeal, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1742 of the Labor Code, as amended by*
2 *Section 1 of Chapter 828 of the Statutes of 2006, is amended to*
3 *read:*

4 1742. (a) An affected contractor or subcontractor may obtain
5 review of a civil wage and penalty assessment under this chapter
6 by transmitting a written request to the office of the Labor
7 Commissioner that appears on the assessment within 60 days after
8 service of the assessment. If no hearing is requested within 60 days
9 after service of the assessment, the assessment shall become final.

10 (b) Upon receipt of a timely request, a hearing shall be
11 commenced within 90 days before the director, who shall appoint
12 an impartial hearing officer possessing the qualifications of an
13 administrative law judge pursuant to subdivision (b) of Section
14 11502 of the Government Code. The appointed hearing officer
15 shall be an employee of the department, but shall not be an
16 employee of the Division of Labor Standards Enforcement. The
17 contractor or subcontractor shall be provided an opportunity to
18 review evidence to be utilized by the Labor Commissioner at the
19 hearing within 20 days of the receipt of the written request for a
20 hearing. Any evidence obtained by the Labor Commissioner
21 subsequent to the 20-day cutoff shall be promptly disclosed to the
22 contractor or subcontractor.

23 The contractor or subcontractor shall have the burden of proving
24 that the basis for the civil wage and penalty assessment is incorrect.
25 The assessment shall be sufficiently detailed to provide fair notice
26 to the contractor or subcontractor of the issues at the hearing.

27 Within 45 days of the conclusion of the hearing, the director
28 shall issue a written decision affirming, modifying, or dismissing
29 the assessment. The decision of the director shall consist of a notice
30 of findings, findings, and an order. This decision shall be served
31 on all parties and the awarding body pursuant to Section 1013 of
32 the Code of Civil Procedure by first-class mail at the last known
33 address of the party on file with the Labor Commissioner. Within
34 15 days of the issuance of the decision, the director may reconsider
35 or modify the decision to correct an error, except that a clerical
36 error may be corrected at any time.

37 The director shall adopt regulations setting forth procedures for
38 hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

~~(h) This section shall remain in effect only until January 1, 2009, and as of that date is repealed.~~

SEC. 2. Section 1742 of the Labor Code, as amended by Section 2 of Chapter 828 of the Statutes of 2006, is repealed.

~~1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after~~

1 service of the assessment. If no hearing is requested within 60 days
2 after service of the assessment, the assessment shall become final.

3 ~~(b) (1) Upon receipt of a timely request, a hearing shall be~~
4 ~~commenced within 90 days before an administrative law judge~~
5 ~~appointed by the Director of Industrial Relations. The appointed~~
6 ~~hearing judge shall be an employee of the department, but shall~~
7 ~~not be an employee of the Division of Labor Standards~~
8 ~~Enforcement. The contractor or subcontractor shall be provided~~
9 ~~an opportunity to review evidence to be utilized by the Labor~~
10 ~~Commissioner at the hearing within 20 days of the receipt of the~~
11 ~~written request for a hearing. Any evidence obtained by the Labor~~
12 ~~Commissioner subsequent to the 20-day cutoff shall be promptly~~
13 ~~diselosed to the contractor or subcontractor.~~

14 ~~(2) The contractor or subcontractor shall have the burden of~~
15 ~~proving that the basis for the civil wage and penalty assessment~~
16 ~~is incorrect. The assessment shall be sufficiently detailed to provide~~
17 ~~fair notice to the contractor or subcontractor of the issues at the~~
18 ~~hearing.~~

19 ~~(3) Within 45 days of the conclusion of the hearing, the~~
20 ~~administrative law judge shall issue a written decision affirming,~~
21 ~~modifying, or dismissing the assessment. The decision of the~~
22 ~~administrative law judge shall consist of a notice of findings,~~
23 ~~findings, and an order. This decision shall be served on all parties~~
24 ~~and the awarding body pursuant to Section 1013 of the Code of~~
25 ~~Civil Procedure by first-class mail at the last known address of the~~
26 ~~party on file with the Labor Commissioner. Within 15 days of the~~
27 ~~issuance of the decision, the administrative law judge may~~
28 ~~reconsider or modify the decision to correct an error, except that~~
29 ~~a clerical error may be corrected at any time.~~

30 ~~(4) The Director of Industrial Relations shall adopt regulations~~
31 ~~setting forth procedures for hearings under this subdivision.~~

32 ~~(c) An affected contractor or subcontractor may obtain review~~
33 ~~of the decision of the administrative law judge by filing a petition~~
34 ~~for a writ of mandate to the appropriate superior court pursuant to~~
35 ~~Section 1094.5 of the Code of Civil Procedure within 45 days after~~
36 ~~service of the decision. If no petition for writ of mandate is filed~~
37 ~~within 45 days after service of the decision, the order shall become~~
38 ~~final. If it is claimed in a petition for writ of mandate that the~~
39 ~~findings are not supported by the evidence, abuse of discretion is~~

1 established if the court determines that the findings are not
2 supported by substantial evidence in the light of the whole record.

3 (d) A certified copy of a final order may be filed by the Labor
4 Commissioner in the office of the clerk of the superior court in
5 any county in which the affected contractor or subcontractor has
6 property or has or had a place of business. The clerk, immediately
7 upon the filing, shall enter judgment for the state against the person
8 assessed in the amount shown on the certified order.

9 (e) A judgment entered pursuant to this section shall bear the
10 same rate of interest and shall have the same effect as other
11 judgments and shall be given the same preference allowed by law
12 on other judgments rendered for claims for taxes. The clerk shall
13 not charge for the service performed by him or her pursuant to this
14 section.

15 (f) An awarding body that has withheld funds in response to a
16 civil wage and penalty assessment under this chapter shall, upon
17 receipt of a certified copy of a final order that is no longer subject
18 to judicial review, promptly transmit the withheld funds, up to the
19 amount of the certified order, to the Labor Commissioner.

20 (g) This section shall provide the exclusive method for review
21 of a civil wage and penalty assessment by the Labor Commissioner
22 under this chapter or the decision of an awarding body to withhold
23 contract payments pursuant to Section 1771.5.

24 (h) This section shall become operative on January 1, 2009.

25 **SECTION 1.**

26 *SEC. 3.* Section 1742.1 of the Labor Code is amended to read:

27 1742.1. (a) After 60 days following the service of a civil wage
28 and penalty assessment under Section 1741 or a notice of
29 withholding under subdivision (a) of Section 1771.6, if no request
30 for a hearing has been made, the affected contractor, subcontractor,
31 and surety on a bond or bonds issued to secure the payment of
32 wages covered by the assessment or notice shall be liable for
33 liquidated damages in an amount equal to the wages, or portion
34 thereof, that still remain unpaid. If the assessment or notice
35 subsequently is overturned or modified after administrative or
36 judicial review, liquidated damages shall be payable only on the
37 wages found to be due and unpaid. If a request for a hearing has
38 been filed pursuant to Section 1742, the affected contractor,
39 subcontractor, or surety may deposit into an escrow account within
40 five working days from the date of filing any of the following:

1 cash, a letter of credit, a payment bond, or negotiable securities in
2 the amount of the wages covered by the assessment. Upon receipt
3 of the administrative decision or notice from the court regarding
4 a writ of mandate filed pursuant to Section 1094.5 of the Code of
5 Civil Procedure, whichever is applicable, setting forth the amount
6 of money due and owing, that amount of money shall be distributed
7 from the escrow account, along with any interest earned, to the
8 prevailing party, that may be either or both of the following:

9 (1) ~~The affected contractor or subcontractor.~~

10 (2) ~~The Labor Commissioner.~~

11 The Labor Commissioner shall distribute any funds found owing
12 to an affected employee to that affected employee.

13 If an escrow account is not established, the affected contractor,
14 subcontractor, or surety shall be liable for liquidated damages in
15 an amount equal to the wages, or portion thereof, that still remain
16 unpaid. Any liquidated damages collected shall be distributed to
17 the employee along with the unpaid wages. Section 203.5 shall
18 not apply to claims for prevailing wages under this chapter.

19 *Additionally, if the contractor or subcontractor demonstrates*
20 *to the satisfaction of the director that he or she had substantial*
21 *grounds for appealing the assessment or notice with respect to a*
22 *portion of the unpaid wages covered by the assessment or notice,*
23 *the director shall waive payment of the liquidated damages with*
24 *respect to that portion of the unpaid wages. Any liquidated*
25 *damages shall be distributed to the employee along with the unpaid*
26 *wages. Section 203.5 shall not apply to claims for prevailing wages*
27 *under this chapter.*

28 *(b) Notwithstanding subdivision (a), there shall be no liability*
29 *for liquidated damages if the full amount of the assessment or*
30 *notice, including penalties, has been deposited with the Department*
31 *of Industrial Relations, within 60 days following service of the*
32 *assessment or notice, for the department to hold in escrow pending*
33 *administrative and judicial review. The department shall release*
34 *such funds, plus any interest earned, at the conclusion of all*
35 *administrative and judicial review to the persons and entities who*
36 *are found to be entitled to such funds.*

37 ~~(b)~~

38 (c) The Labor Commissioner shall, upon receipt of a request
39 from the affected contractor or subcontractor within 30 days
40 following the service of a civil wage and penalty assessment under

1 Section 1741, afford the contractor or subcontractor the opportunity
2 to meet with the Labor Commissioner or his or her designee to
3 attempt to settle a dispute regarding the assessment without the
4 need for formal proceedings. The awarding body shall, upon receipt
5 of a request from the affected contractor or subcontractor within
6 30 days following the service of a notice of withholding under
7 subdivision (a) of Section 1771.6, afford the contractor or
8 subcontractor the opportunity to meet with the designee of the
9 awarding body to attempt to settle a dispute regarding the notice
10 without the need for formal proceedings. The settlement meeting
11 may be held in person or by telephone and shall take place before
12 the expiration of the 60-day period for seeking administrative
13 review. No evidence of anything said or any admission made for
14 the purpose of, in the course of, or pursuant to, the settlement
15 meeting is admissible or subject to discovery in any administrative
16 or civil proceeding. No writing prepared for the purpose of, in the
17 course of, or pursuant to, the settlement meeting, other than a final
18 settlement agreement, is admissible or subject to discovery in any
19 administrative or civil proceeding. The assessment or notice shall
20 advise the contractor or subcontractor of the opportunity to request
21 a settlement meeting.
22 (e)
23 (d) This section shall become operative on January 1, 2007.